IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5224 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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Prof. BK RAGHUNATH - Petitioner(s)
Versus
CHAIRMAN & 3 - Respondent(s)

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Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR DC DAVE for Respondent(s) : 1 - 2, 4,
MR SP HASURKAR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 06/07/2006
ORAL JUDGMENT

1. This petition has been filed under Article 226 of the Constitution of India challenging order dated 7th May, 1998 made by the Gujarat Affiliated Colleges Services Tribunal in Application No.4 of 1998 in the following factual scenario.

2. The petitioner was admittedly serving with respondent No.2 on and from 6th September, 1985. The petitioner was intimated that he was to be retired on the day he attains age of 58 years and for this purpose his services at the point of time prior to his joining the respondent No.2-College shall not be taken into consideration. The petitioner had worked with Birla Institute of Technology and Science, Pilani, Rajasthan on and from 26th August, 1993 upto 23rd July, 1986. The case of the respondent authorities is that the petitioner cannot be permitted to continue in service till he attains the superannuation age viz. 60 years for the simple reason that he has been appointed w.e.f. 6th September, 1985 and the proviso to Rule V(A) of Section 201 falling within the chapter pertaining to 'Conditions of Service For Teachers of Affiliated Colleges' of statute framed under the Sardar Patel Universities Act, 1955 cannot be complied.

3. In the impugned order the Tribunal has observed as under in Paragraph No.9:

> "... The respondent no. 4 Director of Higher Education has specifically mentioned in his written statement that against the exparte judgment and order passed in Application No.

> 21 of 1994 by this application, the Government has filed Special Civil Application No. 7917 of 1997 and the government has taken into consideration the exparte judgment and order passed in Application No. 21 of 1994 which is passed by this Tribunal and therefore the said exparte judgment cannot be applied in the present case of the applicant. Therefore, after considering all the legal aspects, the Government has taken decision that as per the exparte judgment delivered in application no. 21 of 1994 by this Tribunal the applicant is not entitled to get pensionary benefits as well as superannuation age of 60 years. ....."

4. The papers of Special Civil Application No.7917 of 1997 have been called for and on verification it is found that the petition is filed by one Dr. Ram Prakash Arora and not by the State Government as recorded in the aforesaid paragraph by the Tribunal. Secondly, the petition pertains to claim for payment of pension to the said petitioner viz. Dr. Ram Prakash Arora from the date of retirement and there is no challenge to the order made by the Tribunal in Application No.21 of 1994.

5. In the aforesaid facts and circumstances, it is apparent that the entire basis on which the Tribunal has

proceeded to pass the impugned order is erroneous and the impugned order cannot be allowed to stand. The same is quashed and set aside. Application No.4 of 1998, filed by the petitioner before the Tribunal, shall stand restored to file. The Tribunal is directed to hear the parties afresh and decide the controversy between the parties in accordance with law. Considering the fact that the matter is pending since 1998, it is earnestly hoped that the matter shall be treated on a priority basis and disposed off at the earliest.

6. The petition stands disposed off accordingly. Rule made absolute with no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*